

§ 229.915

of all partnerships proposed to be included in a roll-up transaction results in such lowest combined net cash provided by operating activities, this shall be noted and no separate pro forma financial statements are required.

(c) The pro forma financial statements required by paragraph (b) of this Item (§ 229.914) shall disclose the effect of the roll-up transaction on the successor's:

(1) Balance sheet as of the later of the end of the most recent fiscal year or the latest interim period;

(2) Statement of income (with separate line items to reflect income (loss) excluding and including the roll-up expenses and payments), earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period;

(3) Statement of cash flows for the most recent fiscal year and the latest interim period; and

(4) Book value per share as of the later of the end of the most recent fiscal year or the latest interim period.

Instructions to Item 914. (1) Notwithstanding the provisions of this Item (§ 229.914), any or all of the information required by paragraphs (b) and (c) of this Item (§ 229.914) that is not material for the exercise of prudent judgment in regard to the matter to be acted upon, may be omitted.

(2) If the roll-up transaction is structured to permit participation by portions of partnerships, consideration should be given to the effect of such participation in preparing the pro forma financial statements reflecting a partial roll-up.

§ 229.915 (Item 915) Federal income tax consequences.

(a) Provide a brief, clear and understandable summary of the material Federal income tax consequences of the roll-up transaction and an investment in the successor. Where a tax opinion has been provided, briefly summarize the substance of such opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine. If any of the material Federal income tax consequences are not expected to be the same for investors in all partnerships, the differences shall be described.

(b) State whether or not the opinion of counsel is included as an appendix to

17 CFR Ch. II (4-1-11 Edition)

the prospectus. If filed as an exhibit to the registration statement and not included as an appendix to the prospectus, include a statement to the effect that, upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of the opinion of counsel will be transmitted promptly, without charge, by the general partner or sponsor. The statement should include the name and address of the person to whom investors should make their request.

Subpart 229.1000—Mergers and Acquisitions (Regulation M-A)

SOURCE: 64 FR 61443, Nov. 10, 1999, unless otherwise noted.

§ 229.1000 (Item 1000) Definitions.

The following definitions apply to the terms used in Regulation M-A (§§ 229.1000 through 229.1016), unless specified otherwise:

(a) *Associate* has the same meaning as in § 240.12b-2 of this chapter;

(b) *Instruction C* means General Instruction C to Schedule 13E-3 (§ 240.13e-100 of this chapter) and General Instruction C to Schedule TO (§ 240.14d-100 of this chapter);

(c) *Issuer tender offer* has the same meaning as in § 240.13e-4(a)(2) of this chapter;

(d) *Offeror* means any person who makes a tender offer or on whose behalf a tender offer is made;

(e) *Rule 13e-3 transaction* has the same meaning as in § 240.13e-3(a)(3) of this chapter;

(f) *Subject company* means the company or entity whose securities are sought to be acquired in the transaction (e.g., the target), or that is otherwise the subject of the transaction;

(g) *Subject securities* means the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction; and

(h) *Third-party tender offer* means a tender offer that is not an issuer tender offer.